EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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SHANA GRAY,

Plaintiff,

v. 18 CV 7336 (GHW)

THE CJS SOLUTIONS GROUP LLC,

Defendant.

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New York, N.Y.
April 9, 2019
4:50 p.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

STEPHAN ZOURAS LLP
Attorneys for Plaintiff
BY: CATHERINE T. MITCHELL
RYAN F. STEPHAN

SEYFARTH SHAW LLP
Attorneys for Defendant
BY: CHRISTINA DUSZLAK
GENA BROOK USENHEIMER
-AND-
LITTLER MENDELSON PC
BY: JACQUELINE E. KALK

LARSON KING LLP
Attorneys for Intervenor Timothy Borup
BY: JOSEPH SNODGRASS

(In chambers; parties present telephonically)

THE COURT: This is Judge Woods. Do I have counsel for plaintiff on the line?

MR. STEPHAN: Good afternoon, your Honor. You have Ryan Stephan and Catie Mitchell, on behalf of the Gray plaintiffs.

THE COURT: Good. Thank you.

Do I have counsel for defendant on the line?

MS. USENHEIMER: Yes. This is Gena Usenheimer and Christina Duszlak, for HCI, at Seyfarth Shaw.

MS. KALK: Also Jackie Kalk, from Littler, on behalf of defendants.

THE COURT: Thank you very much.

Do I have counsel for intervenor Mr. Borup on the line?

MR. SNODGRASS: Yes. Good afternoon, your Honor. This is Joe Snodgrass, on behalf of Tim Borup.

THE COURT: Good. Thank you, all.

As you know, we are here to discuss the putative intervenor Mr. Borup's motion to intervene and to transfer this case to the District of Minnesota. I've reviewed the parties' submissions and the arguments presented during our April 5 conference and carefully considered those issues. Still, if any party would like to provide me with any additional information or argument in support of your respective

positions, I will invite you to do so now.

First, counsel for Mr. Borup, anything that you'd like to add?

MR. SNODGRASS: No, your Honor.

THE COURT: Thank you.

Counsel for plaintiff in the Gray matter?

MR. STEPHAN: Just briefly, your Honor. I'm not sure that this was addressed during our call last Friday, but we do believe that the classes at issue, the plaintiffs are different. We thought it was important to point that out. In our case, we've clearly defined the case as at-the-elbow support. It's a limited group of 1099 workers. Our class period would go from August 2015 to May of 2017. We have approximately 500 people in that class. We only brought FLSA opt-in claims.

The Borup case, on the other hand, has defined the class as all individuals classified as independent contractors. That could be at-the-elbow, Epic Activation Consultants, or others. My understanding is that the lead plaintiff in that case worked there outside of our class period of May of 2018. My understanding is that there is approximately 100 class members, and in that case, he has both -- Mr. Snodgrass has both FLSA opt-in and also Rule 23 opt-out claims.

So we just want to make sure the Court didn't get hung up that we're just looking at this as a job title only type

situation. We do believe that there are important differences.

Secondly, with regards to prejudice, if it wasn't clear already, we believe that the plaintiffs in Gray here have a valid settlement. By transferring this case, they would suffer prejudice, there would be delay. Potentially, they would be lumped in with all sorts of other independent contractors, not just a narrow group that we have defined in the Gray case.

Finally, I think -- and the parties can correct me if I am wrong -- that the statute of limitations -- the tolling agreement has expired in that case. To the extent that litigation ensues there, there is a real risk that claims will be lost if the settlement that we have achieved here will not be finalized, and that the plaintiffs in this case here will lose out.

THE COURT: Thank you.

You described how it is that your collective is limited. Is that how your collective allegations are pleaded?

MR. STEPHAN: It is, your Honor. We talk about at-the-elbow support staff. That's what these cases are about. And once we got further along in the case and started discussing resolution, we clearly merely addressed only this group based on this time period, in this role only.

THE COURT: Thank you.

Is the settlement collective identical to the pleading

in the complaint?

MR. STEPHAN: No.

THE COURT: Thank you.

It's broader in the complaint?

MR. STEPHAN: It may be a little bit broader in the complaint, but the intent was the same for this group of at-the-elbow consultants, not all independent contractors.

THE COURT: Good. Thank you.

Anything else for counsel for defendant?

MS. USENHEIMER: This is Gena Usenheimer. I just want to pick up on what Mr. Stephan was saying. Here, our settlement is FLSA collective claims only, and the settlement -- the proposed settlement is structured in such a way, that the only people who would be impacted by the settlement are individuals who make the affirmative step to cash a settlement check. So there's no prejudice to anybody who doesn't want to participate in the settlement. There is no prejudice to Mr. Borup. He's not even -- even if he were going to receive notice of the settlement, which he's not going to, because he filed outside the collective definition in our case, he would have no prejudice because he could simply elect not to cash his check.

THE COURT: Good.

MS. USENHEIMER: That's all I wanted to add.

THE COURT: Thank you very much.

Counsel for Mr. Borup, do you care to respond, in particular with respect to the comment regarding the duration of the tolling agreement?

MR. SNODGRASS: Yes. So as it relates to the tolling agreement, and as it was submitted to this Court, the court in Minnesota has issued an order, in place right now, tolling the statute of limitations for everybody, and the judge also said on the record, and it's also in this Court's record, that he may extend tolling back beyond even the filing of the Gray case. In other words, the judge has already indicated that it's possible that we could capture more people, which I'm sure everybody on this call would be in favor of, as getting as many people as possible.

As far as the differences between the groupings, the pleadings are identical. They're both for ATEs. There was no temporal limit. In fact, the Gray complaint talks about current ATEs when it was filed in August of 2018. The attempt to limit, or narrow, or change the pleading in the certified class was done only in the settlement process. And, further, as far as the job duties themselves, Mr. Borup was the only one that submitted proof saying this is what I do, this is what I did, I was an ATE, and there is no proof whatsoever that anybody that's part of the narrowed settlement is any different than Mr. Borup.

So then the last issue was, well, there's no

prejudice -- the defense raised the issue that there's no prejudice to Mr. Borup. Well, the issue isn't whether or not Mr. Borup himself; the issue is who gets to represent or should represent this collective. And, certainly, Ms. Gray can settle her own individual claim today. The question is who should represent them in this case? And because of a wide variety of reasons, first filed being amongst them, the ability to go back further on the statute of limitations, the issue about strength in numbers, the whole purpose behind a collective is to have strength in numbers, not allow the defendant to divide and conquer, as it's already doing and as demonstrated by the settlement here -- in our opinion, a very weak settlement -- these are the reasons why the first-filed rule should be faithfully applied here. There's a presumption in this circuit that first-to-file rule should apply, and we think this is the classic case for its application.

That's all I have, your Honor.

THE COURT: Thank you, counsel.

So, counsel, can I ask you to each place your phones on mute, please. I'm going to rule on Mr. Borup's motion now. I'll let you know after I've completed my oral decision when I invite further comment from the parties. Until then, please keep your phones on mute. Upon considering the arguments presented today and in the parties' submissions, I'm prepared to rule on Mr. Borup's motion. As I will render my decision

orally, I ask counsel again to keep your phones on mute while I provide my analysis.

For the reasons that follow, I am granting Mr. Borup's -- the motion to intervene, and I'm transferring the case to the District of Minnesota.

My analysis proceeds in two parts. First, I will explain why I'm granting Mr. Borup leave to intervene. Second, I will discuss why I have decided to transfer this case. As the parties are well familiar with the essential facts, I will not recite them in detail here. Rather, to the extent that a particular fact is relevant, I will embed it in my analysis.

I. Intervention:

On February 21, 2019, Mr. Borup requested leave to intervene in this case pursuant to Federal Rule of Civil Procedure 24(b), which governs permissive intervention. Mr. Borup does not contend that intervention as a matter of right is at issue here, and so I will consider only the question of permissive intervention. For the reasons that follow, Mr. Borup is granted leave to intervene in this case.

(a) Standard:

Rule 24(b) provides that "on timely motion, the court may permit anyone to intervene who...has a claim or defense that shares with the main action a common question of law or fact." Federal Rule of Civil Procedure 24(b)(1). "Permissive intervention is wholly discretionary with the trial court."

U.S. Postal Service v. Brennan, 579 F.2d 188, 191 (2d Cir. 1978). Of course, however, in exercising its discretion, a court "must consider whether granting permissive intervention will unduly delay or prejudice the adjudication of the rights of the existing parties." In re Holocaust Victim Assets Litig., 225 F.3d 191, 202 (2d Cir. 2000)(citation and quotation marks omitted); Federal Rule of Civil Procedure 24(b) of (3).

As is apparent from the text of Rule 24(b), "The threshold inquiry" in evaluating a motion for permissive interpleader "is whether the application for intervention is timely. Among the factors to be considered are: '(1) how long the applicant had notice of the interest before it made the motion to intervene; (2) prejudice to existing parties resulting from any delay; (3) prejudice to the applicant if the motion is denied; and (4) any unusual circumstances for or against a finding of timeliness.'" Kamdem-Ouaffo v. PepsiCo, Inc. 314 F.R.D. 130, 134 (S.D.N.Y. 2016)(quoting United States v. Pitney Bowes, Inc., 25 F.3d 66, 70 (2d Cir. 1994). "While courts use these four factors as a guide, the determination of whether a motion to intervene is timely must be evaluated against the totality of the circumstances before the court." Id. (quotation marks omitted). "Whether a motion to intervene is 'timely' is [also] driven heavily by an analysis of prejudice: Whether the parties to the case will be prejudiced by intervention, and were the proposed intervenor

will be prejudiced by being kept out of the litigation." Authors Guild 2009 WL 3617732 at *2.

Additionally, the purported intervenor must have "a claim or defense that shares with the main action a common question of law or fact." SEC v. Caledonian Bank Ltd., 317 F.R.D 358, 368 (S.D.N.Y. 2016). The words "claim or defense" were not "read in a technical sense, but only require some interest on the part of the applicant." Louis Berger Group, Inc. v. State Bank of India, 802 F.Supp.2d 482, 488 (S.D.N.Y. 2011)(quotation marks omitted).

"Courts applying Rule 24 'must be mindful that each intervention case is highly fact specific and tends to resist comparison to prior cases.'" Kemdem-Ouaffo, 314 F.R.D at 134 (quoting Aristocrat Leisure Ltd v. Deutsche Bank Trust Company Ams., 262 F.R.D 348, 352 (S.D.N.Y. 2009).

(b) Application:

As I just articulated, the key inquiries here are (1) timeliness of the intervention; (2) whether the intervention would cause undue prejudice or delay; and (3) whether the Borup litigation involves common questions of law or fact with this case. As I find all three inquiries favor intervention here, I am granting Mr. Borup leave to intervene pursuant to Federal Rule of Civil Procedure 24(b). I will take up each issue in turn.

1. Timeliness:

Counsel for Mr. Borup has proffered, both here and before the district court in Minnesota, that he did not become aware of this litigation until January 31, 2019. Borup moved to intervene on February 21, 2019. The Court does not consider the intervening 21-day period a lengthy or inappropriate delay. Indeed, I do not believe that any party was meaningfully impacted by Borup's filing of his motion on February 21, 2019, rather than on some earlier date between then and the 31st of January. Indeed, while the motion to intervene may have provided incentive for the parties here to conclude their settlement negotiations more quickly, that can hardly be considered a relevant prejudice. Accordingly, I find that any delay between January 31, 2019, and February 21, 2019, was not prejudicial.

However, under normal circumstances, Borup would have been on constructive notice of this case due to its public filings and docket. See MasterCard International, Inc. v. Visa International Serv. Association, Inc., 471 F.3d 377, 390 (2d Cir. 2006). As this case was filed on August 14, 2018, were I to impute constructive notice of this case's filing to Borup, the question of timeliness might weigh against intervention here. However, I have been presented with persuasive rationale why constructive notice should not be imputed here. First, as I mentioned previously, both here and before the Minnesota court, counsel for Mr. Borup has proffered

that his PACER searches did not reveal this case, and that, as a result, he did not become aware of this case until January 31, 2019. His representations have been consistent, and I do not have a basis to doubt them. Accordingly, I accept that PACER did not reveal this case and that counsel for Mr. Borup did not know that this case had been filed until January 31, 2019.

Also of concern here are the events which took place in Minnesota. The transcript of the February 26, 2019 proceeding before Magistrate Judge Schultz, which I will refer to simply as the transcript, reveals that CJS's Minnesota counsel, including Ms. Kalk, proffered that they themselves did not know that this case had been filed until some point in December 2018. Transcript at 3:13-20, Docket No. 57-19. I note, however, that during our last conference, Ms. Kalk clarified that this case was referenced in her firm's billing statements as early as the end of October 2018. Furthermore, the existence of this case was not disclosed to Judge Schultz at the conference before him on January 22, 2019, despite its relevance to the issues discussed there. Id. at 3:23 to 5:15. Indeed, Judge Schultz noted that CJS's Minnesota counsel "knew the [Gray] matter existed" and that he felt that "it was not fully candid with the court to not mention that [the Gray] matter existed." Transcript at 5:5-7.

I'm concerned that what Judge Schultz described as a

lack of candor may evidence an effort on the part of CJS itself to cabin off this litigation. While I do not, at this point, ascribe that intent to counsel for CJS, it bears on my analysis of timeliness here - as part of my assessment of the totality of the circumstances in this very fact-specific analysis.

Accordingly, in light of the full facts and circumstances, as presented to me, I decline to impute constructive notice of this case to Mr. Borup and accept his counsel's proffer that he first became aware of this case on January 31, 2019. As a result, any prejudice to the parties stemming from the 21-day delay between the date that counsel became aware of this case and the date on which he filed this motion is minimal. On the other hand, there is a palpable potentiality that the plaintiffs here could benefit from Borup's intervention, distinguishing plaintiffs from plaintiff's counsel.

Accordingly, in light of the full facts and circumstances presented, I find Borup's intervention to be timely.

2. Common question of law or fact:

For the reasons which follow, I find that the Minnesota litigation and this case share common questions of law and fact.

The Borup complaint defines the relevant FLSA collective as "all individuals who were classified as

independent contractors while performing consulting work for The CJS Solutions Group LLC d/b/a The HCI Group...in the United States, for the maximum time period as may be allowed by law." Docket No. 40-6, paragraphs 7 to 10. The Gray complaint defines the relevant FLSA collective as "all individuals who were classified as independent contractors by defendant that currently work, or have worked, for defendant as an ATE [at the elbow] or any other similarly titled hourly paid position, during the applicable statute of limitations period and have not already released their claims." Complaint, paragraph 25.

As pleaded, the two complaints, by my lights, have clearly overlapping definitions of the relevant FLSA collective. Both are nationwide, both cover the "at-the-elbow" consultants at issue in both cases, and both extend to the maximum period covered by law. This is, in part, why the two putative collectives already share one member, Mr. Backers. I note that counsel for the plaintiffs in the Gray matter has described the scope of the FLSA collective as substantially more narrow than what's provided for in the pleading during the course of today's conference.

Initially, the Minnesota litigation focused on a particular subset of the at-the-elbow consultants who worked at the Mayo Clinic. However, Judge Schultz permitted discovery of a wider swath of potential collective members, including the plaintiffs here, in the Gray case, in part because the Borup

complaint is pleaded so as to encompass the collective here. At least I understand that to be a portion of the basis for the judge's determination. In sum, despite the fact that the two plaintiffs held different titles at different facilities, as I understand it, they were both at-the-elbow contractors who have pled essentially duplicative FLSA collectives against the same defendant. Given the facial overlap of the pleadings and the clearly present common questions, I conclude that the two cases share multiple common questions of law and fact.

3. Undue prejudice or delay:

Nor does granting Mr. Borup's motion create a risk of undue prejudice or delay. I am sensitive to the fact that the parties here, in this case, have engaged in protracted negotiations, resulting in their proposed settlement, which is currently before me for review pursuant to Cheeks. However, as counsel for Borup expressed in our last conference, the fact that a settlement has been proposed is not necessarily indicative of a quick payout for the putative collective here. I have not substantively reviewed the settlement, and I take no position on its adequacy. I simply note that Judge Schultz and the district court in Minnesota, given the advanced posture of the Minnesota litigation, and the district court's exposure to the facts may be well positioned to make a determination -- may be better positioned to make a determination regarding the adequacy of the settlement.

I am concerned that any risk of prejudice or delay here would stem from the risk that I grant Mr. Borup's motion to transfer. However, any such delay or prejudice is consistent, to some degree, with the underlying purpose of the FLSA, to "extend the frontiers of social progress by ensuring to all our able-bodied working men and women a fair day's pay for a fair day's work." Cheeks v. Freeport Pancake House, Inc., 769 F.3d 199, 206 (2d Cir. 2015) - which requires that the Court ensure fair settlements for putative FLSA collectives. See id. at 206 (grounding its decision "in the unique policy considerations underlying the FLSA"). In that context, I don't believe that the risk to the settlement here or risk of delay is undue because it permits a comprehensive evaluation of the settlement by a single judge, who has full knowledge of the issues presented on a broader basis.

I'm also concerned by what appears to be CJS's strategic decision to cabin off this litigation from the Minnesota litigation. CJS's strategic decision to cabin off this litigation from the Minnesota litigation may have had an adverse impact on the valuation of the case here. I take no position on that issue beyond noting its existence. However, given the potential risk to the putative collective and the broad purpose of the FLSA, I find that any prejudice or delay caused by granting Mr. Borup's motion is not undue. Rather, any such delay of, or prejudice to, the proposed settlement

reached here seems to serve the useful purpose of ensuring that the court best positioned to review the settlement, and to safeguard the interests of the putative collective, is deciding the case. Accordingly, I do not find that granting Mr. Borup's motion would lead to undue prejudice or delay.

Additionally, as I note from counsel for Mr. Borup's comments, the underlying case in Minnesota benefits from a tolling order by the Court that reduces the substance, or the weight, of the concern articulated by counsel for the Gray plaintiffs regarding the potential adverse effect of the delay in the resolution of the case, if indeed this transfer results in such a delay.

4. Conclusion:

As I've determined that Mr. Borup's application to intervene is timely made, that there are common questions of law and fact between the cases, and that granting the motion will not result in undue prejudice or delay, I exercise my discretion to grant Mr. Borup's motion to intervene.

II. Transfer:

Having granted Mr. Borup permission to intervene, I turn now to his motion to transfer the case to Minnesota. For the reasons that follow, that motion is granted.

(a) Standard:

The first-filed rule is a "well settled principle in this circuit that 'where there are two competing lawsuits, the

first suit should have priority, absent the showing of balance of convenience...or...special circumstances...giving priority to the second.'" First City Nat'l Bank & Trust Co. v. Simmons, 878 F.2d 76, 79 (2d Cir. 1989). This is in keeping with the general rule among federal district courts to avoid duplicative litigation. See, e.g., Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976).

"The Second Circuit has emphasized the importance of establishing a single determination of a controversy between the same litigants. However, given the complex problems that can arise from multiple federal filings, the disposition of a second-filed case is not governed by a rigid test, but requires instead that the district court consider the equities of the situation when exercising its discretion." Wyler-Wittenberg v. MetLife Home Loans, Inc., 899 F.Supp.2d 235, 247 (E.D.N.Y. 2012)(transferring FLSA collective pursuant to the first-to-file rule)(alterations, quotations and quotation marks omitted). In order for the "first-filed" rule to apply, there must be "identical or substantially similar parties and claims present in both courts." In re Cuyahoga Equip. Corp., 980 F.2d 110, 116-17 (2d Cir. 1992). However, in this circuit, substantially similar does not require that the parties and issues be identical. Wyler-Wittenberg, 899 F.Supp.2d at 247 (collecting cases).

"A change of venue is appropriate if: (1) the

plaintiff could have brought the case initially in the proposed transferee forum; and (2) transfer would promote the convenience of the parties and witnesses and the interest of justice." id. at 248 (alterations omitted, capitalization altered). In deciding a Section 1404(a) motion to transfer, the first question a court must ask is whether the case could have been brought in the proposed transferee district. Herbert Ltd. Partnership v. Elec. Arts, Inc., 325 F.Supp.2d 282, 285 (S.D.N.Y. 2004). If the case could properly have been filed in the proposed transferee district, the court determines whether transfer actually is appropriate by weighing various private- and public-interest factors. Courts in the Second Circuit generally consider the following nonexclusive list of factors in determining whether transfer is appropriate in a given case:

(1) The convenience of the witnesses and the availability of process to compel the attendance of unwilling witnesses;

(2) The convenience of the parties;

(3) The location of relevant documents and the relative ease of access to sources of proof;

(4) The locus of operative facts;

(5) The relative means of the parties;

(6) The comparative familiarity of each district with the governing law;

(7) The weight accorded to the plaintiff's choice of

forum;

And (8) judicial economy and the interests of justice."

Bank of America N.A. v. Wilmington Trust FSB, 943 F.Supp.2d 417, 426 (S.D.N.Y. 2013).

The "consideration of the 'interest of justice' factor encompasses the private and public economy of avoiding multiple cases on the same issues." Williams v. City of New York, 2006 WL 399456 at *3 (S.D.N.Y. February 1, 2006)(quoting Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26 (1960)("to permit a situation in which two cases involving precisely the same issues are simultaneously pending in different district courts leads to the wastefulness of time, energy and money that Section 1404(a) was designed to prevent"). The existence of a related action in the transferee district is a strong factor to be weighed with regard to judicial economy and may be determinative. See, e.g., Citicorp Leasing, Inc. v. United Amer. Funding, Inc., 2004 WL 102761 at *6 (S.D.N.Y. January 21, 2004.) "The judicial economy factor is a separate component of the court's Section 1404(a) transfer analysis and may be determinative in a particular case."

(b) Application:

It is an undisputed fact that the Minnesota litigation was filed prior to this one, and as I discussed previously, there is a substantial overlap between the FLSA actions as both

deal with at-the-elbow consultants and payment of them, and both cases have been broadly pled, such that the putative collectives are duplicative, in part, of each other. Accordingly, this case falls within the ambit of the first-filed rule, which, while discretionary, weighs heavily in favor of transfer. Indeed, the existence of the related action in Minnesota demonstrates that there are substantial efficiencies to be gained by avoiding duplicative litigation here.

Furthermore, as I have previously articulated, I am somewhat concerned by the fact that this case was not seasonally disclosed to Judge Schultz. While I will not go so far here as to determine that a reverse auction took place, the fact that CJS took steps to cabin off these litigations from each other is at least indicative evidence of a reverse auction. And regardless of whether CJS intentionally created a reverse auction, the existence of multiple cases covering the same FLSA collective pending here and in Minnesota is a duplicative and inefficient allocation of judicial resources coupled with a real risk of harm to the interests of the putative collectives. Accordingly, judicial economy and the interests of justice strongly compel transfer here.

Nor does this case present one of the "special circumstances" in which I might feel compelled to depart from the first-filed rule. As Borup pointed out during the April 5,

2019 conference, the existence of tolling agreements here and in the Minnesota litigation, most importantly in the Minnesota litigation, safeguard the plaintiffs against the risk of their claims expiring during any delay caused by transfer if these claims are covered by the claims covered by the district court's order there. And the case law I have cited makes it very clear that there is no categorical rule preventing the application of the first-filed rule to opt-in FLSA collectives. Rather, in a case such as this, where there are indicia of a reverse auction implemented by the defendant with full knowledge of both pending cases, my obligation to protect the interests of the collective counsels towards transferring this case to the court best positioned to evaluate any settlement at issue.

None of the other seven 1404(a) factors weighs strongly against transfer. Ms. Gray worked in New York, and so her choice of forum here is given some weight. However, she has pled that she "and other similarly situated ATEs were subject to defendant's uniform policies and practices..." complaint at paragraph 24. Her claim that she was the victim of a "universal" policy has at least some support in the fact that the Mayo Clinic-based plaintiffs in Minnesota have such similar claims to the New York plaintiffs. So while it may be slightly more convenient for Ms. Gray herself to litigate her case here, and her individual facts have a nexus to this forum,

the collective claims have no strong nexus with this district. Accordingly, this factor weighs only slightly against transfer.

And while transfer will, of course, increase the geographical distance between the adjudicating court and the New York events and witnesses, any inconvenience caused by such distance would be relatively minor and may be outweighed by the benefits of access to the Minnesota evidence and putative-collective members, who may provide substantial assistance in litigating this case. Of course, this assumes that this particular settlement is not simply endorsed by the Minnesota court.

Indeed, ultimately, the Minnesota evidence and witnesses may prove just as relevant to the Gray putative collective as the New York evidence is, and nor can CJS claim any inconvenience, as it is already litigating in Minnesota.

Similarly, I have not been presented with an adequate basis upon which I could conclude that transfer would meaningfully prejudice the parties here by interfering with their settlement negotiations. As I've discussed, this case, despite having been filed second and been seemingly cabined off by the Minnesota litigation by CJS, that restriction and the free flow of information may have had an adverse impact on the value of the settlement negotiated here. Again, I take no position on that issue, but note that the Minnesota court is best positioned to make those determinations on a comprehensive

basis and to safeguard the interests of the putative collective.

I do not assume necessarily that the transfer will give rise to a delay. The Minnesota court can evaluate this proposed settlement as proffered by the Gray plaintiff and the defendant, CJS. The Minnesota court can evaluate how it is that they wish to approach the proposed settlement. The court may accept the arguments proffered by counsel for the Gray plaintiffs and by CJS that this settlement is appropriate and a fair, reasonable compromise of the claims, and the district court in Minnesota may also conclude, as advocated by the Gray plaintiffs and CJS, that it will be in the best interests of the opt-in collective members for the court to promptly evaluate and approve that settlement.

I emphasize that I take no position on how it is that the Minnesota court will or should treat this settlement that has been presented to the court. They will make their own independent judgment. The Minnesota court is capable of considering the New York law with respect to any New York law-related claims.

Finally, I note that the location of relevant documents is of minor concern, given the realities of electronic records, nor does it appear that litigating in Minnesota meaningfully impacts the availability of witnesses or evidence or implicates the means of the parties in either case.

And, of course, the Minnesota court is equally familiar with the FLSA as I am and, as I said earlier, is capable of applying any relevant state law.

So, for all of these reasons, I find that the first-to-file rule, judicial economy, and the interests of protecting the putative collective here weighs strongly in favor of the transfer, and that the countervailing factors hold minimal weight. Accordingly, for all of those reasons, again, I'm granting Mr. Borup's motion, and I am transferring this case to the District of Minnesota. I will follow up on this oral decision with a written order to that effect either tonight or tomorrow morning.

So, counsel, thank you very much for your patience as I read through my analysis of this issue.

As I just said, I'll issue a separate order ordering the transfer of this case to the District of Minnesota without delay. As I said earlier, I do not take any position regarding the merits of the proposed settlement here or how it is that the District of Minnesota will or should adjudicate the reasonableness of that settlement. That's now up to the district court in Minnesota, and counsel here are free to make whatever arguments you like to that court regarding the importance of timely approval of that settlement and your desire not to couple it with the litigation going forward in Minnesota.

So I think that that completes my comments. I should say, to the extent that you haven't heard it already, there's a strong vein in my comments, CJS's decision to settle this case separately while aware of the separately pending Minnesota action has certainly weighed in my consideration here, and I have considered that in making my decision that unified review of all of the claims involved here is appropriate.

Anything else that we should take up here? First, counsel for plaintiff?

MR. STEPHAN: No, your Honor.

THE COURT: Thank you.

Counsel for CJS?

MS. USENHEIMER: No. Thank you.

THE COURT: Thank you.

Counsel for Mr. Borup?

MR. SNODGRASS: No, your Honor.

THE COURT: Good. Thank you, all.

* * *